IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.313 OF 2006.
IN
SUIT NO. 2094 OF 2005.

Thomas Cook (India) Ltd. ... Plaintiff.
Versus.
Diksha Batra. ... Defendant.

Shri V.G.Munshi i/by M/s.Udwadia & Udeshi for the Plaintiff.

Shri Arun Siwach i/by M/s.Amarchand & Mangaldas & S.A.Shroff for the Defendant.

CORAM : ABHAY S.OKA, J.

DATED : 5th July, 2007.

P.C.:

1. The Plaintiff has filed this suit for recovery of a sum of Rs.51,455/- with interest at the rate of 18% per annum.

2. The case of the Plaintiff is that by a letter dated 8th January 2004, the Defendant was offered an employment with the Plaintiff company as "Executive Trainee". One of the clauses in the said letter was that on the successful completion of the training by the Defendant for a period of three and half months, the Defendant would be appointed as an Executive on probation for a period of six months. The offer given by the Plaintiff was subject to the Defendant agreeing to execute the necessary undertaking in favour of the

Plaintiff as mentioned in clause 17 of the said letter. The Plaintiff is relying upon the undertaking dated 14th September 2004 allegedly executed by the Defendant. Reliance has been placed on clause 5 of the said undertaking. According to the case of the Plaintiff by letter dated 10th May 2004, the Defendant was appointed in the management cadre as an Executive-Travel with effect from 1st May 2004 on probation of six months on the terms and conditions mentioned in the said letter. Subsequently the Defendant was transferred to Gurgaon, Delhi. On 30th November 2004 the Plaintiff issued a letter of confirmation of employment on completion of probation by the Defendant. In May 2005, the Defendant tendered resignation with effect from 15th May 2005. The Plaintiff called upon the Defendant to pay a sum of Rs.50,000/- in terms of the undertaking of the Defendant. As the Defendant failed to make payment, the present summary suit has been filed.

3. The learned Counsel appearing for the Plaintiff in support of the Summons for Judgment invited my attention to the various documents referred to in the plaint. He placed reliance on clause 5 of the Bond (Exh.B to the plaint) executed by the Defendant. He submitted that admittedly the Defendant has tendered resignation before completion of the period of two years and hence he is liable to pay the sum of Rs.50,000/-.

He submitted that in view of the agreement and undertaking contained in the bond, the Defendant has no defence.

4. Various contentions have been raised in the affidavit-in-reply filed by the Defendant. The first contention is that the Bond (Exh.B) is not properly stamped. It is pointed out that according to the case of the Plaintiff made out in the plaint, the undertaking/bond was executed on 14th September 2004. It is pointed out that the stamp paper has been purchased on 13th January 2004 and hence the said document executed six months after the date of purchase is invalid. It is submitted that on the face of it the said document on which the suit is based is not admissible in evidence. It is also pointed out that the letter of appointment dated 8th January 2004 has been forwarded to the Defendant at New Delhi. It is stated that the Defendant was all along posted at New Delhi. It is submitted that no part of the cause of action has arisen within the ordinary original jurisdiction of this Court. It is submitted that it is obvious that at least a part of the cause of action has arisen outside the limits of jurisdiction of this court. It is submitted that the Plaintiff has failed to obtain a leave under clause 12 of the Letters Patent.

5. The learned Counsel appearing for the Plaintiff has placed reliance on various decisions a reference to which will be made in the later part of this Judgment. There is a rejoinder filed on behalf of the Plaintiff to the said reply. The Plaintiff has also filed an additional affidavit to which a copy of the Resolution of the Board of Directors dated 21st March 2007 has been annexed which ratifies the action of Ms.Maharukh Dosabhai of filing of the suit. It is pointed out that the deficit stamp duty and penalty has been paid on the undertaking/bond. It is pointed out that now the bond is properly stamped in accordance with Article 13 of the Bombay Stamp Act, 1958 and in view of the payment of penalty, it is admissible in evidence. It is also pointed out in the affidavit-in-rejoinder that on 27th February 2007, the said Bond was submitted by the Plaintiff to the General Stamp Office for adjudication. It is also pointed out in the affidavit-in-rejoinder that by mistake it is stated in the plaint that the said undertaking/bond is executed on 13th September 2004 and in fact the said document has been executed in January 2004. The learned Counsel for the Plaintiff submitted that even assuming that the document is executed on 14th September 2004, section 52B will not invalidate the document in view of section 41 of the said Act of 1958.

6. I have considered the submissions. It is

clearly averred in the plaint that the undertaking/bond has been executed on 14th September 2004. Such averments are found in paragraphs 5, 7 and 9 of the plaint. Only by way of rejoinder, it is sought to be contended that the bond is executed in January 2004. At various places in the plaint including the prayer clause, the date of the said undertaking/bond is mentioned as 14th September 2004. It is not in dispute that the stamp paper has been purchased on 13th January 2004. Going by the averments made in the plaint, it is obvious that the stamp paper was not used for a period of more than six months from the date of its purchase and it was sought to be used for the first time in September 2004 i.e. after expiry of the period of six months. Under section 52B of the said Act of 1958, a stamp paper is rendered invalid if it is not used within a period of six months from the date of purchase. Reliance was sought to be placed on section 41 of the said Act of 1958. The said section may not have application as the same deals with the instruments on which the duty has been paid under sections 34, 39 and 40 of the said Act of 1958. It is contended that subsequently the balance stamp duty is paid on the said document. By virtue of section 52B, the stamp paper was rendered invalid on the expiry of a period of six months from 13th January 2004. Reliance has been placed on a decision of the Division Bench of this Court in the case

of M/s.Tex India and others v/s. Punjab and Sind Bank and another (AIR 2003 Bombay 444) which considered the provisions of section 52B of the said Act of 1958. The said decision supports the contention that the undertaking executed in September 2004 on an invalid stamp paper is not admissible in evidence. The stand taken in rejoinder that the document was executed in January 2004 is clearly an afterthought.

7. The entire claim of the Plaintiff is based on the said document of undertaking/bond. There is a clear defence available to the Defendant in so far as the said document is concerned. A serious doubt is also raised regarding the admissibility of the said document in evidence. There is another defence raised by the Defendant regarding the failure of the Plaintiff to apply for and obtain a leave under clause 12 of the Letters Patent. Admittedly the leave has not been obtained. The letter of appointment was issued to the Defendant at Delhi and the Defendant was posted at Delhi and thereafter at Gurgaon. She tendered her resignation while she was posted at Gurgaon.

8. It is thus obvious that a plausible defence is available to the Defendant. The said defence cannot be said to be a sham or a moonshine defence. Therefore, a case is made out for grant of unconditional leave to the

Defendant to defend the suit.

9. Hence the Summons for Judgment is disposed of by the following order:

(i) Unconditional leave to defend the suit is granted to the Defendant.

(ii) Inspection to be given within six weeks, written statement to be filed within six weeks from the date of giving inspection.

(iii) The suit shall be thereafter transferred to the list of commercial causes.

Judge.